



Paper No. 5

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In re Application of
Hayashi, et al.
Application No. 09/916,529
Filed: July 30, 2001
Docket No. 01FN046US

: DECISION ON PETITION

This is a decision on the petition filed September 24, 2001, to accord the above-identified application a filing date of July 30, 2001, with Figures 35 and 36 of the drawings as a part of the original disclosure.

Application papers in the above-identified application were filed on July 30, 2001. However, on September 13, 2001, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Items in a Nonprovisional Application." Applicant was notified that the application papers had been accorded a filing date; however, Figures 35 and 36 of the drawings appeared to have been omitted.

In response, applicant filed the present petition to accord a filing date of July 30, 2001, with Figures 35 and 36 as part of the original disclosure. Applicant asserted that Figures 35 and 36 were with the application as originally filed on July 30, 2001.

A review of the record reveals that the drawing sheet containing Figures 35 and 36 was not submitted on July 30, 2001. Moreover, a review reveals that two drawings sheets were submitted in duplicate; the drawing sheet containing Figures 32 - 34, and the drawing sheet containing Figures 68 - 69. The evidence submitted on petition, including a "postcard receipt" and the declarations of attorney Reif and assistant Sosa, is not more persuasive than the actual papers shown to have been received by the official file. Because Figures 35 and 36 were not present on July 30, 2001, the date the application was filed, Figures 35 and 36 cannot be considered a part of the original disclosure of the application. Accordingly, the application cannot be accorded the filing date of July 30, 2001, with the drawings of Figures 35 and 36 as a part of the original disclosure.

Accordingly, the petition is **DISMISSED**.

Figures 35 and 36, submitted with the instant petition on September 24, 2001, will not presently be entered or used during the prosecution of this application. However, applicant may resubmit the matter included in Figures 35 and 36 as an amendment for consideration by the examiner under Sections 608.02(h) of the Manual of Patent Examining Procedure.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of July 30, 2001, using the drawings submitted on that date.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.



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